

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

APRIL BRANDT,) Case No. _____
)
Plaintiff,)
)
vs.) **NOTICE OF REMOVAL**
)
UNMC PHYSICIANS,)
)
Defendant.)

TO: COUNSEL FOR PLAINTIFF AND THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA:

Defendant UNMC Physicians ("UNMC Physicians"), through undersigned counsel, hereby removes the above-captioned action from the District Court of Douglas County, Nebraska, to the United States District Court for the District of Nebraska pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, and respectfully files this Notice of Removal, stating:

1. UNMC Physicians was served with the Summons and Complaint in the above-referenced action on January 20, 2015.
2. In accordance with 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days after service of a copy of the Complaint.
3. Removal of this action is proper because this action presents a federal question over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and supplemental questions of state law over which this court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.
4. The Complaint in this case contains four counts: (I) Violation of the Nebraska Fair Employment Practices Act (Sexual Harassment, Discrimination, Retaliation and Unlawful Termination); (II) Violation of the Civil Rights Act, Title VII (Sexual Harassment, Discrimination, Retaliation and Unlawful Termination); (III) Violation of the Omaha Municipal

Code (Sexual/Sexual Orientation Harassment, Discrimination, Retaliation and Unlawful Termination); and (IV) Public Policy/Whistleblower Retaliation (Neb. Rev. Stat. § 48-1114).

5. This Court has original federal question jurisdiction over Count II of the Complaint as it alleges violations of Title VII of the Civil Rights Act of 1964, as amended, and therefore arises under federal law. *See* 28 U.S.C. § 1331.

6. This Court has original supplemental jurisdiction over Counts I, III, and IV of the Complaint because they are so related to the claims in Count II that they form part of the same case or controversy under Article III of the United States Constitution. *See* 28 U.S.C. § 1337(a).

7. A true and correct copy of all documents on file with the District Court of Douglas County, Nebraska, are attached hereto as Exhibit A.

8. Notice of Removal will be provided to the District Court of Douglas County, Nebraska. A copy of the Notice of Removal of Action to Federal Court that will be filed is attached hereto as Exhibit B.

WHEREFORE, Defendant requests that the above-entitled action pending against it in the District Court of Douglas County, Nebraska, be removed to this Court.

DATED this 19th day of February, 2015.

UNMC PHYSICIANS, Defendant

By: /s/Jarrod D. Reece
Bryan S. Hatch, #21009
Jarrod D. Reece, #24800
Stinson Leonard Street LLP
1299 Farnam Street, Suite 1500
Omaha, NE 68102
(402) 930-1711
(402) 829-8711 (Facsimile)
bryan.hatch@stinsonleonard.com
jarrod.reece@stinsonleonard.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19th day of February, 2015, a copy of the foregoing document was electronically filed via CM/ECF which sent notice of such filing to all CM/ECF registered counsel of record.

/s/Jarrod D. Reece

Jarrod D. Reece, #24800

Filed in Douglas District Court

*** EFILED ***

Case Number: D01CI140005860

Transaction ID: 0001473148

Filing Date: 07/21/2014 04:38:11 PM CDT

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

APRIL BRANDT,) Doc _____ No. _____
)
 Plaintiff,)
)
 vs.) COMPLAINT
)
 UNMC PHYSICIANS, A Nebraska Not-For-)
 Profit Corporation,)
)
 Defendant.)

EXHIBIT

tabbies®

A

Comes now the Plaintiff APRIL BRANDT, by and through undersigned counsel, and hereby files this Amended Complaint against UNMC PHYSICIANS, (“UNMC”) and states and alleges as follows:

I. NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et. seq.*, Title I of the Civil Rights Act of 1991, the Nebraska Fair Employment Practices Act Neb. Rev. Stat. §48-1101, *et. seq.* (“NFEPA”); and the Omaha Municipal Code 13-82 *et. seq.*

APRIL BRANDT, (“Brandt”) was subjected to a hostile work environment based upon her sex where a representative of UNMC, targeted her for discipline because of her sexual orientation. Brandt was discriminated against regarding the terms and conditions of her employment based on sex, and retaliated against for complaints based on sex discrimination. Brandt was terminated based upon her sex and in retaliation because she complained of discrimination, illegal practices, and harassment based upon her sex.

II. JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to the Nebraska Fair Employment Practices Act, which has concurrent jurisdiction of the federal law claims.
2. The employment practices alleged to be unlawful were committed within the jurisdiction of Douglas County, Nebraska.

III. PARTIES

3. Plaintiff, April Brandt is a female and at all relevant times alleged herein, was a resident of Omaha, Nebraska, and is a former employee of Defendant UNMC.
4. At all relevant times, UNMC has continuously been a Nebraska not-for-profit corporation doing business in the State of Nebraska and the City of Omaha, Nebraska. At all relevant times, Defendant has employed at least fifteen (15) employees.
5. At all relevant times, UNMC has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e-(b), (g) and (h).
6. UNMC is an employer as that term is defined pursuant to the applicable state and federal statutes set forth herein.

IV. ADMINISTRATIVE PROCESS

7. On or about November 1, 2013, Brandt filed a Charge of Discrimination with the Nebraska Equal Opportunity Commission ("NEOC"), charge number, NEB 2-13/14-11-44327-

RS/EEOC 32E-2014-00076 alleging unlawful employment practices occurring within three hundred days or less from the date of filing the charge.

8. On or about November 1, 2013, Brandt filed a second Charge of Discrimination with the Nebraska Equal Opportunity Commission ("NEOC"), charge number, NEB 2-13/14-11-44326-S/EEOC 32E-2014-00614, alleging unlawful employment practices occurring within three hundred days or less from the date of the filing the charge.

9. On or about April 25, 2014, Brandt received a Right-to-Sue regarding NEB 2-13/14-11-44327-RS/EEOC 32E-2014-00076. Brandt has not received a right-to-sue regarding NEB 2-13/14-11-44326, however, it is anticipated this will be issued in the foreseeable future.

V. FACTUAL BACKGROUND

10. Brandt, a female, was employed by UNMC as a lead receptionist at Village Point Aesthetic Surgery, 17617 Burke Street, Omaha, Nebraska 68104 from approximately December 15, 2008 to the date of her termination on July 16, 2013. Beginning shortly after her partner accompanied Brandt to a Christmas party in December of 2011, Kristen Hegge (hereinafter "Hegge"), other employees of Defendant began harassing Brandt and creating disciplinary issues for her.

11. On or around October, 2012, Brandt complained about the harassment because of her sex to a supervising physician and Human Resources Department of UNMC, but no action was taken to protect Brandt from the continued harassment.

12. In May of 2013, Plaintiff reported an illegal practice to her supervisor, Courtney Frost and the supervising physicians regarding offering discount coupons to Botox patients. The clinic was awarding coupons even though the patients were not meeting the requirements of the

terms and conditions of the program run through the Botox manufacturer. Defendant was allowing patients to schedule their injections less than 90 days and were not purchasing the required monetary amount of \$200.00, both of which were required under the Allergan Botox program. Plaintiff believed the practice to be illegal as she felt it was fraudulent to claim the monetary compensation from the manufacturer without meeting the terms and conditions of the program and was also a safety risk to the patients because of the shortened timeframes between injections.

13. Plaintiff was directed to continue the illegal practices by her superiors.

14. On or about June 18, 2013, Plaintiff applied for a promotion for the position of Clinic Coordinator. This would have placed Plaintiff in a position of equal authority to Ms. Hegge and would require frequent interaction between Brandt and Hegge.

15. On or about June 19, 2013, Brandt was interviewed by an Human Resources Recruiter through UNMC and advised on June 24, 2013 that she would receive a second interview.

16. On or about June 28, 2013, Plaintiff was written up for various issues that Plaintiff believes are false or were manufactured by Defendant's representatives. Brandt's supervisor informed Brandt at that meeting that she would not receive the promotion because Hegge did not want her to be promoted. The June 28, 2013 corrective action also disqualified her for the promotion.

17. On or about July 16, 2013, Plaintiff was terminated for allegedly possessing confidential information in her vehicle on July 11, 2013 and July 16, 2013. Plaintiff allowed Defendant's representatives to search her vehicle on July 16, 2013 and there was no confidential information located.

18. Plaintiff's performance was satisfactory.

COUNT I

**VIOLATION OF THE NEBRASKA FAIR EMPLOYMENT PRACTICES ACT
SEXUAL HARASSMENT, DISCRIMINATION, RETALIATION AND UNLAWFUL
TERMINATION**

19. Plaintiff realleges paragraphs 1 through 18 as if fully set forth herein.

20. Defendant discriminated against Plaintiff with respect to terms and conditions of her employment on the basis of her sex and subjected her to sexual harassment, all in violation of the Nebraska Fair Employment Practices Act.

21. Plaintiff complained to Defendant about the sexual harassment she experienced and otherwise opposed practices made unlawful by the Nebraska Fair Employment Practices Act.

22. Defendant retaliated against Plaintiff because of her complaints and opposition to harassment.

23. Plaintiff's sex and her protected activity were motivating factors in Defendant's retaliation against her, discipline, failure to promote and termination.

24. Defendant's agents, with Defendant's authority, made Plaintiff's working conditions intolerable;

25. As a result of Defendant's acts and omissions, Plaintiff has in the past and will in the future suffer damages including, but not limited to, mental and emotional distress; fear; anguish; humiliation; embarrassment; lost enjoyment of life; lost wages, benefits, future earnings, and other emoluments of employment.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount which will fully and fairly compensate her for her injuries and damages, for interest as allowed by law, for

attorney's fees, for the costs of this action, and for such other relief as may be just in the circumstances and consistent with the purpose of the Nebraska Fair Employment Practices Act.

COUNT II

**VIOLATION OF THE CIVIL RIGHTS ACT, TITLE VII,
SEXUAL HARASSMENT, DISCRIMINATION, RETALIATION AND UNLAWFUL
TERMINATION**

26. Plaintiff realleges paragraphs 1 through 25 as if fully set forth herein.
27. Defendant discriminated against Plaintiff with respect to terms and conditions of her employment on the basis of her sex and subjected her to sexual harassment, all in violation of the Title VII of the Civil Rights Act of 1964, as Amended.
28. Plaintiff complained to Defendant about the sexual harassment she experienced and otherwise opposed practices made unlawful by Title VII of the Civil Rights Act of 1964, as Amended.
29. Defendant retaliated against Plaintiff because of her complaints and opposition to harassment.
30. Plaintiff's sex and her protected activity were motivating factors in Defendant's retaliation against her, failure to promote Plaintiff, and Plaintiff's termination.
31. Defendant and/or its agents with Defendant's authority made Plaintiff's working conditions intolerable; and
32. As a result of Defendant's acts and omissions, Plaintiff has in the past and will in the future suffer damages including, but not limited to, mental and emotional distress; fear; anguish; humiliation; embarrassment; lost enjoyment of life; lost wages, benefits, future earnings, and other emoluments of employment.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount which will fully and fairly compensate her for her injuries and damages, for interest as allowed by law, for attorney's fees, for the costs of this action, and for such other relief as may be just in the circumstances and consistent with the purpose of Title VII of the Civil Rights Act of 1964, as Amended.

COUNT III

VIOLATION OF THE OMAHA MUNICIPAL CODE
SEXUAL/SEXUAL ORIENTATION HARASSMENT, DISCRIMINATION,
RETALIATION AND UNLAWFUL TERMINATION

33. Plaintiff realleges paragraphs 1 through 25 as if fully set forth herein.
34. Defendant discriminated against Plaintiff with respect to terms and conditions of her employment on the basis of her sex and subjected her to sexual harassment, all in violation of the Title VII of the Civil Rights Act of 1964, as Amended.
35. Plaintiff complained to Defendant about the sexual harassment she experienced and otherwise opposed practices made unlawful by Omaha Municipal Code, as Amended.
36. Defendant retaliated against Plaintiff because of her complaints and opposition to harassment.
37. Plaintiff's sex and her protected activity were motivating factors in Defendant's retaliation against her, failure to promote Plaintiff, and Plaintiff's termination.
38. Defendant and/or its agents with Defendant's authority made Plaintiff's working conditions intolerable; and
39. As a result of Defendant's acts and omissions, Plaintiff has in the past and will in the future suffer damages including, but not limited to, mental and emotional distress; fear;

anguish; humiliation; embarrassment; lost enjoyment of life; lost wages, benefits, future earnings, and other emoluments of employment.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount which will fully and fairly compensate her for her injuries and damages, for interest as allowed by law, for attorney's fees, for the costs of this action, and for such other relief as may be just in the circumstances and consistent with the purpose of the Omaha Municipal Code, as Amended.

COUNT IV

PUBLIC POLICY/WHISTLEBLOWER RETALIATION – NEB. REV. STATS. 48-1114

40. Plaintiff repleads paragraphs 1-39 as if fully set forth herein.

41. It is illegal activity to defraud manufacturers of medical products of monies. It is also against the public policy of the State of Nebraska to risk patient safety. Furthermore, employers may not discriminate or retaliate against employees who lodge complaints relating to illegal practices and/or patient safety.

42. By terminating plaintiff, defendant retaliated against Brandt for opposing an illegal/unsafe practice of the employer. Such retaliation violates the public policy of the State of Nebraska and the Nebraska Fair Employment Practices Act.

43. Plaintiff's whistleblowing activity was a motivating factor regarding Defendant's decision to discipline, not promote and terminate the Plaintiff.

44. As a result of the defendants' retaliatory conduct, plaintiff has incurred lost income and the value of job related benefits and continues to incur said damages. Plaintiff has also incurred significant emotional harm and other compensatory damages as a result of the defendants' unlawful actions.

WHEREFORE, Plaintiff Shannan L. Garcia demands judgment against Defendant,, in an amount which will fully and fairly compensate her for her injuries and damages, for appropriate equitable relief, for interest as allowed by law, for attorney's fees, for the costs and expenses of this action, and for such other relief as may be just in the circumstances and consistent with the purpose of the Nebraska Fair Employment Practices Act and/or the Common Law of the State of Nebraska.

PRAYER FOR RELIEF

Wherefore, the Plaintiff, April Brandt, respectfully requests that this Court:

- A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in any employment practice which discriminates on the basis of sex and retaliation.
- B. Order the Defendant to pay Brandt back pay, front pay, compensatory damages, consequential damages and liquidated damages in amounts to be proven at trial, and all other affirmative and equitable relief necessary to eradicate the effects of Defendant's unlawful employment practices.
- C. Direct the Defendant to expunge all negative reports in Plaintiff's personnel file.
- D. Order Defendant to pay Brandt punitive damages for its malicious and reckless conduct in amount to be determined at trial.
- E. Award the Plaintiff her reasonable attorneys' fees and expert witness fees.
- F. Award Plaintiff her costs in this action.
- G. Grant such further relief as the Court deems necessary and proper.

JURY TRIAL DEMAND

The Plaintiff requests a jury trial on all matters raised in this Complaint.

Dated this 21st day of July, 2014.

Respectfully Submitted,

APRIL BRANDT, Plaintiff

BY: s/ Kelly K. Brandon
Kelly K. Brandon, #20734
Dyer Law, PC, LLO
10730 Pacific Street
Suite 111
Omaha, Nebraska 68114
(402) 393-7529
(402) 391-2289 (facsimile)
Kelly@dyerlaw.com
Attorneys for Plaintiff

Filed in Douglas District Court
*** EFILED ***

Case Number: D01CI140005860

Transaction ID: 0001948900

Filing Date: 01/06/2015 01:59:24 PM CST

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

APRIL BRANDT,)	CI14-5860
)	
Plaintiff,)	
)	
vs.)	PRAECIPE
)	
UNMC PHYSICIANS, A Nebraska Not-For-)	
Profit Corporation,)	
)	
Defendant.)	

TO THE CLERK OF SAID COURT:

PLEASE ISSUE Summons with a copy of the Complaint, in the above-entitled matter and deliver the same to attorney for the Plaintiff for service upon the Defendant, UNMC PHYSICIANS, A Nebraska Not-For-Profit Corporation, via certified mail, return receipt requested, to the following address:

Cory D. Shaw, Registered Agent
UNMC Physicians
984220 Nebraska Medical Center
Omaha, NE 68198-4220

DATED this 6th day of January, 2015.

APRIL BRANDT, Plaintiff,

By: /s/ Kelly K. Brandon
Kelly K. Brandon, #20734
Fiedler & Timmer, P.L.L.C
P.O. Box 504
Gretna, NE 68028
(515) 294-1999
(515) 294-9923 (facsimile)
kelly@employmentlawnebraska.com
Attorney for Plaintiff

Image ID:
D00300198D01**SUMMONS**

Doc. No. 300198

IN THE DISTRICT COURT OF Douglas COUNTY, NEBRASKA
 1701 Farnam
 Omaha NE 68183

April Brandt v. UNMC Physicians

Case ID: CI 14 5860

TO: UNMC Physicians

FILED BYClerk of the Douglas District Court
01/07/2015

You have been sued by the following plaintiff(s):

April Brandt

Plaintiff's Attorney: Kelly K Brandon
 Address: 10730 Pacific Street, Ste 111
 Omaha, NE 68114

Telephone: (402) 393-7529

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: JANUARY 7, 2015

BY THE COURT:



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

UNMC Physicians
 Cory D. Shaw, Reg Agent
 984220 Nebraska Med Center
 Omaha, NE 68198

Method of service: Certified Mail

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.



001105868D01

JCT COURT OF DOUGLAS COUNTY, NEBRASKA

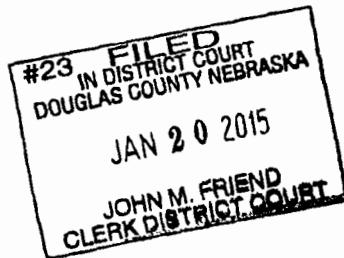
APRIL BRANDT,) CI14-5860

Plaintiff,)

vs.)

UNMC PHYSICIANS, A Nebraska Not-For-) PRAECIPE FOR ALIAS SUMMONS
Profit Corporation,)

Defendant.)



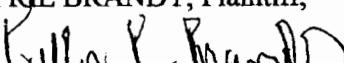
TO THE CLERK OF SAID COURT:

PLEASE ISSUE Summons with a copy of the Complaint, in the above-entitled matter and deliver the same to attorney for the Plaintiff for service upon the Defendant, UNMC PHYSICIANS, A Nebraska Not-For-Profit Corporation, via personal service by private process server, to the following address:

Cory D. Shaw, Registered Agent
UNMC Physicians
984220 Nebraska Medical Center
Omaha, NE 68198-4220

DATED this 20th day of January, 2015.

By:

APRIL BRANDT, Plaintiff,

Kelly K. Brandon, #20734
Fiedler & Timmer, P.L.L.C
P.O. Box 504
Gretna, NE 68028
(515) 294-1999
(515) 294-9923 (facsimile)
kelly@employmentlawnebraska.com
Attorney for Plaintiff

ISSUED
mm

Image ID:
D00302035D01**SUMMONS**

Doc. No. 302035

IN THE DISTRICT COURT OF Douglas COUNTY, NEBRASKA
 1701 Farnam
 Omaha NE 68183

April Brandt v. UNMC Physicians

Case ID: CI 14 5860

TO: UNMC Physicians

FILED BYClerk of the Douglas District Court
01/20/2015

You have been sued by the following plaintiff(s):

April Brandt

Plaintiff's Attorney: Kelly K Brandon
 Address: 10730 Pacific Street, Ste 111
 Omaha, NE 68114

Telephone: (402) 393-7529

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: JANUARY 20, 2015

BY THE COURT:



John M. Friend
Clerk


PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

UNMC Physicians
 Cory D. Shaw, Reg Agent
 984220 Nebraska Med Center
 Omaha, NE 68198

BY: Authorized Person

Method of service: Personal Service

Special Instructions:

Per attached order service by process server

You are directed to make such service within twenty days after date of issue, and show proof of service as provided by law.



IN THE I

001101134D01

UNTY, NEBRASKA

APRIL BRANDT,) CI14-5860

Plaintiff,)

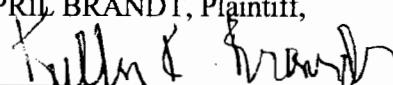
vs.) MOTION FOR ALTERNATIVE
UNMC PHYSICIANS, A Nebraska Not-For- SERVICE
Profit Corporation,)

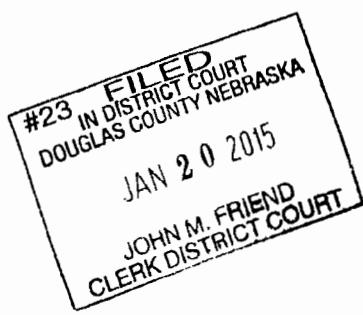
Defendant.)

COMES NOW the Plaintiff, April Brandt, by and through her attorney of record and hereby requests an Order from the Court allowing for alternative service by a private process server. The Plaintiff would show to the Court that Plaintiff served the Complaint via certified mail, which has not been returned. Service needs to be effectuated by today's date and therefore request permission to have service effectuated by private process server, Russ Zeeb, who is authorized to do so via Neb. Rev. Stat. 25-507.

WHEREFORE, Plaintiff prays that an Order allowing service of the Summons and Complaint by personal service with a process server be entered.

DATED this 20th day of January, 2015.

APRIL BRANDT, Plaintiff,
By: 
Kelly K. Brandon, #20734
Fiedler & Timmer, P.L.L.C
P.O. Box 504
Gretna, NE 68028
(515) 294-1999
(515) 294-9923 (facsimile)
kelly@employmentlawnebraska.com
Attorney for Plaintiff



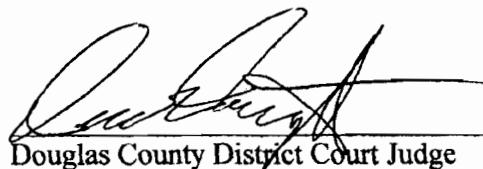
IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

APRIL BRANDT,) CI14-5860
vs.)
Plaintiff,)
UNMC PHYSICIANS, A Nebraska Not-For-) ORDER FOR ALTERNATIVE
Profit Corporation,) SERVICE
Defendant.)

THIS MATTER came on for hearing on Plaintiff's Motion for Alternative Service. The Court being duly advised in the premises finds that said Motion should be granted and Plaintiff is allowed to serve the Summons and Complaint in this matter via private process server.

DATED this 20th day of January, 2015.

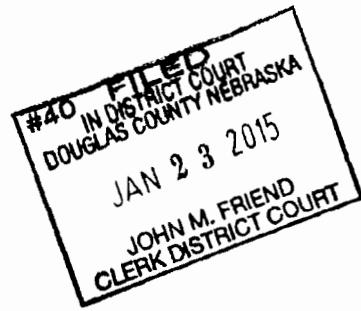
BY THE COURT:



Douglas County District Court Judge

PREPARED AND SUBMITTED BY

Kelly K. Brandon, #20734
Fiedler & Timmer, P.L.L.C.
P.O. Box 504
Gretna, NE 68028
(515) 294-1999
(515) 294-9923 (facsimile)
kelly@employmentlawnebraska.com
Attorney for Plaintiff



J00280831D01

CERTIFICATE OF SERVICE

I, the undersigned, certify that on January 26, 2015 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

UNMC Physicians
Cory D. Shaw, Reg Agent
984220 Nebraska Med Center
Omaha, NE 68198

Kelly K Brandon
kelly@employmentlawnebraska.com

Date: January 26, 2015 BY THE COURT:

John M. Friend
CLERK



Filed in Douglas District Court

*** EFILED ***

Case Number: D01CI140005860

Transaction ID: 0002018648

Filing Time: 2015-01-27 12:35:49 PM CST

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

APRIL BRANDT, Plaintiff, vs. UNMC PHYSICIANS, A Nebraska Not-For-Profit Corporation, Defendant.	Case No. CI14-5860 NOTICE OF CHANGE OF ADDRESS
---	--

Plaintiff's counsel hereby gives notice that her new business address is Fiedler & Timmer, 20615 Highway 370, Gretna, NE 68028. Telephone (402) 316-3060; Facsimile (515)294-9923.

FIEDLER & TIMMER, P.L.L.C.


Kelly K. Brandon, # 20734
kelly@employmentlawnebraska.com
20615 Highway 370
Gretna, NE 68028
Telephone: (402) 316-3060
Fax: (515)294-9923
ATTORNEY FOR PLAINTIFF

Copy to:

Cory D. Shaw, Registered Agent
UNMC Physicians
984220 Nebraska Medical Center
Omaha, NE 68198-4220

Certificate of Service

I hereby certify that on Tuesday, January 27, 2015 I provided a true and correct copy of the
Change of Address to the following:

UNMC Physicians service method: First Class Mail

Signature: /s/ Kelly K. Brandon (Bar Number: 20734)

Filed in Douglas District Court

*** EFILED ***

Case Number: D01CI140005860

Transaction ID: 0002089028

Filing Date: 02/18/2015 01:40:30 PM CST

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

APRIL BRANDT,)
Plaintiff,) Case No. CI14-5860
vs.)
UNMC PHYSICIANS, A Nebraska Not-For-)
Profit Corporation,)
Defendant.) **FIRST AMENDED COMPLAINT**

Comes now the Plaintiff APRIL BRANDT, by and through undersigned counsel, and hereby files this Amended Complaint against UNMC PHYSICIANS, (“UNMC”) and states and alleges as follows:

I. NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et. seq.*, Title I of the Civil Rights Act of 1991 and the Nebraska Fair Employment Practices Act Neb. Rev. Stat. §48-1101, *et. seq.* (“NFEPA”).

APRIL BRANDT, (“Brandt”) was subjected to a hostile work environment based upon her sex where a representative of UNMC, targeted her for discipline because of her sexual orientation. Brandt was discriminated against regarding the terms and conditions of her employment based on sex, and retaliated against for complaints based on sex discrimination. Brandt was terminated based upon her sex and in retaliation because she complained of discrimination, illegal practices, and harassment based upon her sex.

II. JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to the Nebraska Fair Employment Practices Act, which has concurrent jurisdiction of the federal law claims.
2. The employment practices alleged to be unlawful were committed within the jurisdiction of Douglas County, Nebraska.

III. PARTIES

3. Plaintiff, April Brandt is a female and at all relevant times alleged herein, was a resident of Omaha, Nebraska, and is a former employee of Defendant UNMC.

4. At all relevant times, UNMC has continuously been a Nebraska not-for-profit corporation doing business in the State of Nebraska and the City of Omaha, Nebraska. At all relevant times, Defendant has employed at least fifteen (15) employees.

5. At all relevant times, UNMC has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e-(b), (g) and (h).

6. UNMC is an employer as that term is defined pursuant to the applicable state and federal statutes set forth herein.

IV. ADMINISTRATIVE PROCESS

7. On or about November 1, 2013, Brandt filed a Charge of Discrimination with the Nebraska Equal Opportunity Commission ("NEOC"), charge number, NEB 2-13/14-11-44327-RS/EEOC 32E-2014-00076 alleging unlawful employment practices occurring within three hundred days or less from the date of filing the charge.

8. On or about November 1, 2013, Brandt filed a second Charge of Discrimination with the Nebraska Equal Opportunity Commission ("NEOC"), charge number, NEB 2-13/14-11-44326-S/EEOC 32E-2014-00614, alleging unlawful employment practices occurring within three hundred days or less from the date of the filing the charge.

9. On or about April 25, 2014, Brandt received a Right-to-Sue regarding NEB 2-13/14-11-44327-RS/EEOC 32E-2014-00076. On or about January 30, 2015, Brandt received a Right-to-Sue regarding NEB 2-13/14-11-44326.

V. FACTUAL BACKGROUND

10. Brandt, a female, was employed by UNMC as a lead receptionist at Village Point Aesthetic Surgery, 17617 Burke Street, Omaha, Nebraska 68104 from approximately December 15, 2008 to the date of her termination on July 16, 2013. Beginning shortly after her partner accompanied Brandt to a Christmas party in December of 2011, Kristen Hegge (hereinafter "Hegge"), other employees of Defendant began harassing Brandt and creating disciplinary issues for her.

11. On or around October, 2012, Brandt complained about the harassment because of her sex to a supervising physician and Human Resources Department of UNMC, but no action was taken to protect Brandt from the continued harassment.

12. In May of 2013, Plaintiff reported an illegal practice to her supervisor, Courtney Frost and the supervising physicians regarding offering discount coupons to Botox patients. The clinic was awarding coupons even though the patients were not meeting the requirements of the terms and conditions of the program run through the Botox manufacturer. Defendant was allowing patients to schedule their injections less than 90 days and were not purchasing the required

monetary amount of \$200.00, both of which were required under the Allergan Botox program. Plaintiff believed the practice to be illegal as she felt it was fraudulent to claim the monetary compensation from the manufacturer without meeting the terms and conditions of the program and was also a safety risk to the patients because of the shortened timeframes between injections.

13. Plaintiff was directed to continue the illegal practices by her superiors.

14. On or about June 18, 2013, Plaintiff applied for a promotion for the position of Clinic Coordinator. This would have placed Plaintiff in a position of equal authority to Ms. Hegge and would require frequent interaction between Brandt and Hegge.

15. On or about June 19, 2013, Brandt was interviewed by a Human Resources Recruiter through UNMC and advised on June 24, 2013 that she would receive a second interview.

16. On or about June 28, 2013, Plaintiff was written up for various issues that Plaintiff believes are false or were manufactured by Defendant's representatives. Brandt's supervisor informed Brandt at that meeting that she would not receive the promotion because Hegge did not want her to be promoted. The June 28, 2013 corrective action also disqualified her for the promotion.

17. On or about July 16, 2013, Plaintiff was terminated for allegedly possessing confidential information in her vehicle on July 11, 2013 and July 16, 2013. Plaintiff allowed Defendant's representatives to search her vehicle on July 16, 2013 and there was no confidential information located.

18. Plaintiff's performance was satisfactory.

COUNT I

**VIOLATION OF THE NEBRASKA FAIR EMPLOYMENT PRACTICES ACT
SEXUAL HARASSMENT, DISCRIMINATION, RETALIATION AND UNLAWFUL
TERMINATION**

19. Plaintiff realleges paragraphs 1 through 18 as if fully set forth herein.
 20. Defendant discriminated against Plaintiff with respect to terms and conditions of her employment on the basis of her sex and subjected her to sexual harassment, all in violation of the Nebraska Fair Employment Practices Act.
 21. Plaintiff complained to Defendant about the sexual harassment she experienced and otherwise opposed practices made unlawful by the Nebraska Fair Employment Practices Act.
 22. Defendant retaliated against Plaintiff because of her complaints and opposition to harassment.
 23. Plaintiff's sex and her protected activity were motivating factors in Defendant's retaliation against her, discipline, failure to promote and termination.
 24. Defendant's agents, with Defendant's authority, made Plaintiff's working conditions intolerable;
 25. As a result of Defendant's acts and omissions, Plaintiff has in the past and will in the future suffer damages including, but not limited to, mental and emotional distress; fear; anguish; humiliation; embarrassment; lost enjoyment of life; lost wages, benefits, future earnings, and other emoluments of employment.
- WHEREFORE, Plaintiff demands judgment against Defendant in an amount which will fully and fairly compensate her for her injuries and damages, for interest as allowed by law, for attorney's fees, for the costs of this action, and for such other relief as may be just in the circumstances and consistent with the purpose of the Nebraska Fair Employment Practices Act.

COUNT II

**VIOLATION OF THE CIVIL RIGHTS ACT, TITLE VII,
SEXUAL HARASSMENT, DISCRIMINATION, RETALIATION AND UNLAWFUL
TERMINATION**

26. Plaintiff realleges paragraphs 1 through 25 as if fully set forth herein.
27. Defendant discriminated against Plaintiff with respect to terms and conditions of her employment on the basis of her sex and subjected her to sexual harassment, all in violation of the Title VII of the Civil Rights Act of 1964, as Amended.
28. Plaintiff complained to Defendant about the sexual harassment she experienced and otherwise opposed practices made unlawful by Title VII of the Civil Rights Act of 1964, as Amended.
29. Defendant retaliated against Plaintiff because of her complaints and opposition to harassment.
30. Plaintiff's sex and her protected activity were motivating factors in Defendant's retaliation against her, failure to promote Plaintiff, and Plaintiff's termination.
31. Defendant and/or its agents with Defendant's authority made Plaintiff's working conditions intolerable; and
32. As a result of Defendant's acts and omissions, Plaintiff has in the past and will in the future suffer damages including, but not limited to, mental and emotional distress; fear; anguish; humiliation; embarrassment; lost enjoyment of life; lost wages, benefits, future earnings, and other emoluments of employment.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount which will fully and fairly compensate her for her injuries and damages, for interest as allowed by law, for attorney's fees, for the costs of this action, and for such other relief as may be just in the

circumstances and consistent with the purpose of Title VII of the Civil Rights Act of 1964, as Amended.

COUNT III

PUBLIC POLICY/WHISTLEBLOWER RETALIATION – NEB. REV. STATS. 48-1114

33. Plaintiff repleads paragraphs 1-32 as if fully set forth herein.
34. It is illegal activity to defraud manufacturers of medical products of monies. It is also against the public policy of the State of Nebraska to risk patient safety. Furthermore, employers may not discriminate or retaliate against employees who lodge complaints relating to illegal practices and/or patient safety.
35. By terminating plaintiff, defendant retaliated against Brandt for opposing an illegal/unsafe practice of the employer. Such retaliation violates the public policy of the State of Nebraska and the Nebraska Fair Employment Practices Act.
36. Plaintiff's whistleblowing activity was a motivating factor regarding Defendant's decision to discipline, not promote and terminate the Plaintiff.
37. As a result of the defendants' retaliatory conduct, plaintiff has incurred lost income and the value of job related benefits and continues to incur said damages. Plaintiff has also incurred significant emotional harm and other compensatory damages as a result of the defendants' unlawful actions.

WHEREFORE, Plaintiff Shannan L. Garcia demands judgment against Defendant,, in an amount which will fully and fairly compensate her for her injuries and damages, for appropriate equitable relief, for interest as allowed by law, for attorney's fees, for the costs and expenses of this action, and for such other relief as may be just in the circumstances and consistent with the

purpose of the Nebraska Fair Employment Practices Act and/or the Common Law of the State of Nebraska.

PRAYER FOR RELIEF

Wherefore, the Plaintiff, April Brandt, respectfully requests that this Court:

- A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in any employment practice which discriminates on the basis of sex and retaliation.
- B. Order the Defendant to pay Brandt back pay, front pay, compensatory damages, consequential damages and liquidated damages in amounts to be proven at trial, and all other affirmative and equitable relief necessary to eradicate the effects of Defendant's unlawful employment practices.
- C. Direct the Defendant to expunge all negative reports in Plaintiff's personnel file.
- D. Order Defendant to pay Brandt punitive damages for its malicious and reckless conduct in amount to be determined at trial.
- E. Award the Plaintiff her reasonable attorneys' fees and expert witness fees.
- F. Award Plaintiff her costs in this action.
- G. Grant such further relief as the Court deems necessary and proper.

JURY TRIAL DEMAND

The Plaintiff requests a jury trial on all matters raised in this Amended Complaint.

Dated this 17th day of February, 2015.

Respectfully Submitted,

APRIL BRANDT, Plaintiff

BY: /s/ Kelly K. Brandon
Kelly K. Brandon, #20734
Fiedler & Timmer, PLLC
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Gretna, NE 68028
(402) 316-3060
(515) 254-9923 (facsimile)
Kelly@employmentlawnebraskas.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day of February, 2015, this First Amended Complaint was sent by United States mail, postage prepaid, and via electronic transmission to:

Jarrod D. Reece
Stinson Leonard Street LLP
1299 Farnam Street, Suite 1500
Omaha, NE 68102-1818

/s/ Kelly K. Brandon

Certificate of Service

I hereby certify that on Wednesday, February 18, 2015 I provided a true and correct copy of the Amended Complaint to the following:

UNMC Physicians service method: First Class Mail

Signature: /s/ Kelly K. Brandon (Bar Number: 20734)

EXHIBIT

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B

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

APRIL BRANDT,)	Case No. CI 14-5860
)	
Plaintiff,)	
)	
vs.)	NOTICE OF REMOVAL OF ACTION TO
)	FEDERAL COURT
UNMC PHYSICIANS,)	
)	
Defendant.)	

TO: COUNSEL FOR PLAINTIFF AND THE CLERK OF THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA:

PLEASE TAKE NOTICE that on February 19, 2015, Defendant UNMC Physicians filed a Notice of Removal of this action in the United States District Court for the District of Nebraska. A true and correct copy of said Notice of Removal is attached and is served and filed with this Notice.

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1446, the filing of said Notice affects the removal of this action to the federal court, and this Court is directed to "proceed no further unless and until the case is remanded."

DATED this 19th day of February, 2015.

UNMC PHYSICIANS, Defendant

By: /s/Jarrod D. Reece
 Bryan S. Hatch, #21009
 Jarrod D. Reece, #24800
 Stinson Leonard Street LLP
 1299 Farnam Street, Suite 1500
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 (402) 829-8711 (Facsimile)
bryan.hatch@stinsonleonard.com
jarrod.reece@stinsonleonard.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served on the following by United States mail, postage prepaid, on this 19th day of February, 2015:

Kelly K. Brandon
Fiedler & Timmer
20615 Highway 370
Gretna, NE 68028

/s/Jarrod D. Reece

Jarrod D. Reece, #24800